

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JOSHUA JOHNSON, et al.,

Appellant,

v.

MISSOURI BOARD OF PROBATION AND PAROLE,

Respondent.

DOCKET NUMBER WD74090

Date: January 31, 2012

Appeal from:
Cole County Circuit Court
The Honorable Jon E. Beetem, Judge

Appellate Judges:
Division Four: Lisa White Hardwick, Chief Judge, Presiding, James M. Smart and
Alok Ahuja, Judges

Attorneys:
Joshua Johnson, Appellant Pro Se, Farmington, MO, for appellant.
Andrew W. Hassell, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

JOSHUA JOHNSON, et al.

Appellant,

v.

MISSOURI BOARD OF PROBATION AND PAROLE,

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WD74090

Cole County

Before Division Four: Lisa White Hardwick, Chief Judge, Presiding, James M. Smart
and Alok Ahuja, Judges

Joshua Johnson appeals the circuit court's judgment denying his petition for a writ of prohibition. He contends he was entitled to a writ prohibiting the Board of Probation and Parole ("Board") from applying the lifetime parole supervision provisions of Section 217.735, RSMo Cum. Supp. 2010, to him. Specifically, he argues the Board's interpretation of Section 217.735 is contrary to the legislature's intent and violates the constitutional prohibition against *ex post facto* laws.

AFFIRMED.

Division Four holds:

(1) The circuit court did not err in holding the Board properly interpreted Section 217.735's lifetime parole supervision provisions to apply to Johnson. The plain language of the first clause of Section 217.735.1 provides that an offender who pleads guilty to or is found guilty of rape, first-degree statutory rape, forcible

sodomy, or first-degree statutory sodomy based on an act committed on or after August 28, 2006, is subject to lifetime parole supervision. To find that the second clause's prior offender requirement applies to the first clause would violate the last antecedent rule, render parts of the statute redundant, and effectively moot the changes made in the 2006 amendment to the statute. Because Johnson pled guilty to first-degree statutory sodomy based on an act committed in March 2007, he is subject to Section 217.735's lifetime parole supervision provisions.

(2) The circuit court did not err in denying Johnson's writ petition because the Board's application of Section 217.735's lifetime parole supervision provisions to him did not violate the constitutional prohibition against *ex post facto* laws. The version of Section 217.735 requiring that Johnson be subject to lifetime parole supervision was in effect in when he committed first-degree statutory sodomy and has not been amended since that time. When the Board notified Johnson in 2010 that he was subject to lifetime parole supervision, the Board was merely modifying its enforcement of Section 217.735 to effectuate the legislature's mandate. A change within the scope of the executive branch's discretion in enforcing laws does not implicate the prohibition against *ex post facto* laws.

Opinion by: Lisa White Hardwick, Chief Judge

January 31, 2012

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